UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

UNITED STATES OF AMERICA	***)***	
	)	
v.	***)***	***Criminal No. 03-18-B-S***
	)	
EASTON WILSON,	***)***	
	)	
Defendant	***)***	

RECOMMENDED DECISION ON MOTION TO SUPPRESS

Easton Wilson, charged in a multiple-defendant indictment with knowingly (i) conspiring to distribute and possess with intent to distribute fifty or more grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846 (Count I), (ii) conspiring to import five or more kilograms of cocaine from Jamaica, in violation of 21 U.S.C. §§ 952(a), 960(a), 960(b)(1)(B)(ii) and 963 (Count III), (iii) distributing and aiding and abetting the distribution of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2 (Counts IV and V), and (iv) possessing with intent to distribute five or more grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B) (Count VI), seeks to suppress statements purportedly obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Second Superseding Indictment (Docket No. 66); Motion To Suppress Evidence ("Motion") (Docket No. 42). An evidentiary hearing was held before me on October 1, 2003 at which the defendant appeared with

counsel.[1] Based on the evidence adduced at the hearing, I recommend that the following findings of fact be adopted and that the Motion be denied.

I. Proposed Findings of Fact

At approximately 7 a.m. on February 12, 2003 a team of law enforcement officers executed a drug-trafficking-related search warrant at a second-floor apartment at 42A South Chestnut Street, Augusta, Maine. Maine Drug Enforcement Agency ("MDEA") special agent Lowell Woodman, Jr. was part of the entry team. Woodman found a man whom he identified at hearing as the defendant, Easton Wilson, standing in one of the apartment's two bedrooms. He ordered Wilson to the ground. Wilson immediately complied, and Woodman handcuffed Wilson's hands behind his back. Per his custom, Woodman re-handcuffed Wilson's hands in front of him – a more comfortable position – once the premises had been secured. No conversation of any note between Woodman and Wilson transpired.

Brian J. Featheringham, a senior special agent with the U.S. Customs Service and case agent in the drug-trafficking investigation that had culminated in the execution of the South Chestnut Street search warrant, entered the apartment in the wake of the entry team. He went into the bedroom, where he observed Wilson seated in a chair with his hands cuffed in front of him. *See* Gov't Exh. 1 (photograph that Featheringham testified accurately represents Wilson's appearance at time Featheringham entered bedroom). Featheringham asked Wilson his name, and Wilson replied, "James Milton." Featheringham told Wilson he did not believe him, whereupon Wilson became quiet and dropped his head. Featheringham advised Wilson that he would shortly be faxing his fingerprints to the FBI to ascertain his true identity.

[1] At the hearing, defense counsel clarified that the defendant no longer presses that portion of the Motion asserting that the search warrant executed on February 12, 2003 was issued without probable cause. *See* Motion at 1, 5-6.

Wilson then gave the name "Easton Anthony Wilson" and said that he was born on March 3, 1964 in Freetown, Jamaica. He talked about the length of time he had been in the United States and said that his sister, who lived in New York, had his green card. At no point during this conversation did Featheringham administer Wilson a *Miranda* warning.

Featheringham left the bedroom to attend to other duties. Philip Riherd, a senior special agent with the U.S. Customs Service who had been assigned the task of interviewing Wilson, then entered the bedroom. He found Wilson in the same position as had Featheringham – sitting in a chair with his hands cuffed in front of him. Both Woodman and Sergeant A. Chris Read of the Augusta Police Department ("APD") also were present in the room. At approximately 7:25 a.m. Riherd commenced his interview of Wilson. He began by advising Wilson of his *Miranda* rights, reading from a Customs form known as a "CF 4612." *See* Gov't Exh. 2.[2] Riherd asked Wilson if he understood the statements, and Wilson said that he did. At that point Riherd asked Wilson to sign the form, and Wilson (with his hands still cuffed in front of him) did so.[3] Afterwards, Riherd printed Wilson's name and date of birth beneath the signature and both Riherd and Woodman signed as witnesses. *See id.* Riherd also printed the time on the form just prior to obtaining Wilson's signature. *See id.*

Although Wilson speaks with an accent, he did not appear to Riherd, Woodman or Read to have

[2] Riherd testified that he gave the *Miranda* advisement verbatim from the CF 4612. Read and Woodman both testified that they heard Riherd give that warning.

[3] Wilson disputes that the signature on the CF 4612 (Gov't Exh. 2) is his, on the basis of which he seeks to suppress that document. At hearing, Wilson testified that he did not sign the form and that the signature thereon is not his; however, Riherd and Woodman both testified that they observed him signing it. Read testified that he did not recall seeing Wilson sign the form; however, he also noted that he may have left the bedroom for a period of time. I do not find Wilson's testimony on this point credible in view of Riherd's and Woodman's credible testimony that they saw him sign the form and my assessment, discussed more fully below, that the signature on the form is consistent with signatures that Wilson has acknowledged, or has not contested, are his.

any trouble understanding Riherd. Nor did Wilson appear to Riherd to be intoxicated or to Woodman to be uncomfortable or in any emotional or physical distress. Nor did Wilson raise any questions or indicate that he had any objection to being interviewed. Riherd and Woodman proceeded to interview Wilson, asking questions that included whether Wilson knew certain individuals, who his cocaine-supply source was and whether he (Wilson) was the biggest drug dealer in the state or in the city of Augusta. The interview concluded, whereupon Riherd gave the original signed CF 4612 form to Featheringham and went about some other duties.

Following the Riherd interview, Featheringham asked Read to transport Wilson to the APD, saying that he (Featheringham) would shortly follow. Read and Wilson engaged in no conversation during the five-minute drive from the apartment to the APD. At the police station, Read began processing Wilson, removing his handcuffs and taking fingerprints and digital photographs. Featheringham then joined the two men and faxed Wilson's fingerprints to the FBI. After doing so, Featheringham returned to the processing room and began pressing Wilson for more detailed information regarding his identity and personal history. He did not at that point discuss with Wilson the facts of the case.

Featheringham then suggested to Wilson that it might be in his best interest to cooperate. In Read's presence, Featheringham showed Wilson the signed CF-4612 form that he had obtained from Riherd and re-read Wilson his *Miranda* rights, point-by-point, from that form. Wilson raised no issue concerning the authenticity of the signature on the form. Read did not observe anything that led him to believe Wilson did not understand what was told him or that he was in any kind of discomfort. Featheringham then asked Wilson if he understood and would be willing to answer questions. Wilson replied that he would answer questions to the best of his ability. Featheringham, who was using the already-signed form as a template,

did not ask Wilson to sign any new waiver. Featheringham then asked Wilson a series of questions regarding his involvement in drug-trafficking, who he knew and who his customers were. Wilson answered the questions, but Featheringham terminated the interview based on his belief that Wilson was not being truthful.[4]

Wilson was transported from the APD to the United States Marshals' lockup at the U.S. District Courthouse in Portland. In the course of processing by the U.S. Marshals, Wilson signed several forms, including a Prisoner Medical Records Release Form (*see* Gov't Exh. 4), a fingerprint card (*see* Gov't Exh. 5) and a Prisoner Personal Property Notice (*see* Gov't Exh. 6).[5] These forms eventually were turned over to Featheringham.

On July 8, 2003, in the presence of defense counsel and counsel for the government, Wilson provided handwriting exemplars (including signatures). *See* Gov't Exh. 7. Featheringham sent the resultant exemplar packet, together with the contested CF-4612 form and the three documents bearing Wilson's signature provided by the U.S. Marshals, to the FBI in Quantico, Virginia, for analysis. By report dated August 5, 2003 the FBI advised Featheringham that the results of its analysis as to whether Wilson had signed the contested form were inconclusive. *See* Gov't Exh. 8.

II. Discussion

[4] Wilson's testimony at hearing concerning the interviews conducted with him on February 12, 2003 differed markedly from that of the officers. Wilson testified that as soon as law enforcement officers entered his bedroom with guns drawn, an officer or officers (evidently Featheringham, whom he described as the first person to interview him) began asking him a continuous stream of drug-trafficking-related questions, including what a black Jamaican was doing in Augusta and whether he had a Jamaican drug connection. He also testified that neither Featheringham nor anyone else interviewed him at the APD. He testified that after Featheringham asked him one or two questions in the APD processing room that he did not answer, Featheringham became irritated and said that he did not wish to talk to Wilson, whom he accused of lying. I do not find this testimony credible.

[5] Defense counsel objected to admission of Gov't Exh. 6 on the basis that Wilson's purported signature thereon is not authentic. The exhibit was admitted over objection. No evidence was produced at hearing that this particular signature was not that of Wilson.

As defense counsel clarified at hearing, Wilson seeks to suppress (i) the CF-4612 form that he allegedly signed (*see* Gov't Exh. 2) on the ground that he did not in fact sign it and (ii) statements obtained on February 12, 2003 purportedly in violation of his *Miranda* rights.

I first address the signature-authenticity issue. As counsel for the government suggests, *see* Objection to Defendant's Motion To Suppress, etc. (Docket No. 58), the court as trier of fact in this matter is authorized to compare the contested signature against the acknowledged signatures to divine whether the disputed signature is authentic, *see, e.g., United States v. Keene*, 341 F.3d 78, 84 (1st Cir. 2003) ("Under 28 U.S.C. § 1731, '[t]he admitted or proved handwriting of any person shall be admissible, for purposes of comparison, to determine genuineness of other handwriting attributed to such person.' The trier of fact is authorized to make such a comparison, with or without the benefit of expert testimony. Fed.R.Evid. 901(b)(3)."). Inasmuch as the court may make such a finding with or without the benefit of expert testimony, *see, e.g., Keene*, 341 F.3d at 84, the fact that the FBI report is inconclusive is not binding on the court.

I find the signature on the contested document sufficiently distinctive and similar to those acknowledged to be Wilson's, *see, e.g.*, Gov't Exhs. 4, 5 & 7, that I have no difficulty concluding that the signature on the CF-4612 (Gov't Exh. 2) is that of Wilson. Accordingly, that document is admissible.

I turn to the next and final question – whether the statements Wilson made to law enforcement officers while in custody on February 12, 2003 are admissible pursuant to *Miranda*. Per *Miranda*, an accused must be advised prior to custodial interrogation "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and

that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda*, 384 U.S. at 478-79. The government bears the burden of proof by a preponderance of the evidence that a purported *Miranda* waiver was voluntary, knowing and intelligent. *See, e.g., Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

On the facts as I have proposed they be found, Wilson's statements can be divided into three groups, all elicited in response to "custodial interrogation": (i) those made initially to Featheringham at the South Chestnut Street apartment without benefit of *Miranda* warnings, (ii) those made to Woodman and Riherd at the South Chestnut Street apartment following *Miranda* warnings and (iii) those made to Featheringham at the APD following a re-reading of *Miranda* warnings. For the following reasons, the government meets its burden of proving the admissibility of all three groups of statements.

As suggested at hearing by counsel for the government, Wilson's initial, un-*Mirandized* statements to Featheringham are admissible pursuant to the so-called "routine booking" exception to the *Miranda* rule, which "exempts from *Miranda's* coverage questions to secure the biographical data necessary to complete booking or pretrial services." *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990) (citation and internal quotation marks omitted).

Although the exception is "phrased in terms of the officer's intention, the inquiry into whether [it] is thus inapplicable is actually an objective one: whether the questions and circumstances were such that the officer should reasonably have expected the question to elicit an incriminating response." *United States v. Reyes*, 225 F.3d 71, 76-77 (1st Cir. 2000). As the First Circuit has further elucidated:

> [W]e think that it would be a rare case indeed in which asking an individual his name, date of birth, and Social Security number would violate *Miranda*. We can imagine situations, of course, that would present a closer case than this one. For example, asking a

> person's name might reasonably be expected to elicit an incriminating response if the individual were under arrest for impersonating a law enforcement officer or for some comparable offense focused on identity; likewise, asking an individual's date of birth might be expected to elicit an incriminating response if the individual were in custody on charges of underage drinking; and questions about an individual's Social Security number might be likely to elicit an incriminating response where the person is charged with Social Security fraud. In such scenarios, the requested information is so clearly and directly linked to the suspected offense that we would expect a reasonable officer to foresee that his questions might elicit an incriminating response from the individual being questioned. In contrast, the appellant here was being booked on charges of participating in a criminal drug conspiracy, to which his name, date of birth, and Social Security number bore no direct relevance.

Id. at 77. The situation at bar is like that in *Reyes*. Featheringham asked questions concerning Wilson's name, date of birth and immigration status, none of which bore any direct relevance to the drug-trafficking charges on which Wilson ultimately was indicted.

With respect to the second and third groups of statements, the government adduces ample evidence that Wilson received full *Miranda* warnings prior to both rounds of questioning, that he acknowledged his voluntary waiver of those rights in writing prior to the first such round, that he had no evident difficulty comprehending English and that he did not appear to be in emotional or physical distress or otherwise impaired during either round.

The facts as I propose they be found support conclusions that Wilson's waivers were:

1 Knowing and intelligent, in the sense that he was informed on both occasions of the full scope of his *Miranda* rights (including the fact that anything he said might be used against him, *see* Gov't Exh. 2), indicated that he understood those rights and did not otherwise appear incapable of understanding them (for example, as a result of lack of proficiency in English or mental impairment). *See, e.g., United States v. Rosario-Diaz*, 202 F.3d 54, 69 (1st Cir. 2000) (noting that government must demonstrate, *inter alia*, by preponderance of evidence that *Miranda* waiver was "made with full awareness of both the nature

of the right being abandoned and the consequences of the decision to abandon.") (citation and internal quotation marks omitted).

2. Voluntary, there being no evidence that police employed coercive, intimidating or abusive tactics to wrest a waiver from him. *See, e.g., id.* (noting that government must show, *inter alia*, by preponderance of evidence that *Miranda* waiver was "voluntary in that [it was] the product of a free and deliberate choice rather than intimidation, coercion and deception[.]") (citation and internal quotation marks omitted).

The government accordingly meets its burden of showing that the second and third groups of statements are admissible pursuant to *Miranda*.

III. Conclusion

For the foregoing reasons, I recommend that the defendant's motion to suppress evidence be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 8th day of October, 2003.

/s/ David M. Cohen

David M. Cohen
United States Magistrate Judge

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